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Lisa R. Youngers
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EX PARTE OR LATE FILED

ORIGINAL

May 13, 1999

EX PARTE

VIA HAND DELIVERY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TWB-204
Washington, D.C. 20554

Re: Application for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech to SBC, CC Docket No. 98-141.

Dear Ms. Salas:

At the request of the Common Carrier Bureau's Policy Division and the Office of Plans and Policy, MCI WORLDCOM submits the enclosed letter regarding examples of benchmarking in a variety of contexts.

Pursuant to section 1.1206(b) of the Commission's Rules, MCI WorldCom submits two copies of this ex parte notice for inclusion in the public record of the above-referenced proceeding.

Sincerely,

Lisa R. Youngers

Lisa R. Youngers

cc: Bill Rogerson
Robert Atkinson
Thomas Krattenmaker
Michelle Carey
Michael Kende
Pamela Megna
Marilyn Simon

Jennifer Fabian
Donald Stockdale
William Dever
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May 13, 1999

VIA HAND DELIVERY

Robert Atkinson
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Federal Communications Commission
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Thomas Krattenmaker
Office of Plans and Policy
Federal Communications Commission
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Room TWB-204
Washington, D.C. 20554

Re: Ex Parte
Application for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech to SBC, CC Docket No. 98-141

Dear Messrs. Atkinson and Krattenmaker:

Pursuant to your request, MCI WorldCom, Inc. ("MCI WorldCom) submits this letter detailing examples of benchmarking from MCI WorldCom's experiences. The FCC has requested benchmarking examples which, in part, illustrate an increase in decisions at the holding company level and a lessening of diversity among the incumbent local exchange carriers ("ILECs").

The examples you asked for essentially represent: decisions made at the holding company level and not at an individual operating company level; examples where a state regulator or MCI WorldCom used the practice of one ILEC as a comparison against another ILEC to illustrate that some service or element should be made available or is not "technically infeasible"; and/or post-Bell Atlantic/NYNEX or SBC/Pacific Telesis merger examples where one company changed its practices or policies to conform with the other company. Many of the examples described herein fall into more than one of these categories.

Benchmarking Examples

- In Bell Atlantic's northern region, in order to gain access to unbundled local switching and to provide service using total combinations of network elements, Bell Atlantic requires that CLECs submit a network design request ("NDR") for every switch where a CLEC intends to offer service. The NDR process includes developing office dialing plans, loading line class codes in to the switch and designing the CLEC's unbundled network for that specific environment. Bell Atlantic informed CLECs to expect long intervals for NDRs because the process is complex. MCI WorldCom argued that it is not clear that Bell Atlantic's NDR process is even necessary. No other ILEC, including Bell Atlantic, before the Bell Atlantic/NYNEX merger, requires such a process for combinations or unbundled local switching. This scenario is described in MCI WorldCom's October 24, 1998 affidavit filed in Bell Atlantic's Petition of New York Telephone Company for Approval of Its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of The Telecommunications Act of 1996 and Draft Filing of Petition of InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996, Case 97-C-0271 (hereinafter "Draft New York Section 271 Filing") (attached as Exhibit 1, ¶¶47 - 48).

- Also in Bell Atlantic's northern region, MCI WorldCom has argued that Bell Atlantic should use a process for Local Number Portability ("LNP") cutovers currently used by BellSouth. Specifically, BellSouth has established a direct interface from the Number Portability Administration Center ("NPAC") to its provisioning systems in order to avoid Bell Atlantic's problems with premature switch translations and re-use of customer facilities both of which result in customer outages. This argument is explained further in MCI WorldCom's October 24, 1998 affidavit filed in Bell Atlantic's Draft New York Section 271 Filing (attached as Exhibit 1, ¶59).

- Bell Atlantic has also argued specifically in New York and Massachusetts that fiber-optic cable, rather than copper cable, is the most cost-efficient for all local loops, regardless of length. MCI WorldCom has argued against this position, however, and pointed out that all other ILECs, including pre-merger Bell Atlantic, agreed that copper is the least costly, most efficient technology for feeder lengths of less than 9,000 feet. A further explanation of this argument is provided in MCI WorldCom's Opening Brief in the Section 252 appeal before the United States District Court for the District of Massachusetts (MCI Telecommunications Corp., et. al. v. New England Telephone & Telegraph Co. d/b/a Bell Atlantic-Massachusetts, et. al. Civil Action No. 98-CV-12375 (RCL)) (attached as Exhibit 2, pages 16-17).

- Earlier this year, MCI WorldCom attempted to provide refunds to customers that had used MCI WorldCom's subsidiary Telecom*USA's 10-10-321 service and were billed incorrectly due to errors in the LECs' switch routing processes. As MCI WorldCom pointed out in the attached letter to Dorothy Attwood, Chief, Enforcement Division, Common Carrier Bureau, (attached as Exhibit 3), while some LECs have provided the information necessary to make these refunds, other LECs state that they cannot provide this information or that they must charge an unreasonable amount to MCI WorldCom for the information. MCI WorldCom described more specifically the comparisons of the different responses from the LECs in attached letter.

- As part of the Bell Atlantic/NYNEX Merger Order conditions, Bell Atlantic submitted Optional Payment Plans for Non-Recurring Charges ("NRCs") in all of its states. Bell Atlantic's proposed plans generally assumed a 2% anticipated bad debt figure despite the fact that this number actually is quite different in each of the individual Bell Atlantic states. Using 1997 ARMIS data and the Hatfield Model, MCI WORLDCOM calculated Bell Atlantic's anticipated bad debt for each of its states to be: DC - .60%; MD - .57%; VA - .40%; WV - .89%; PA - .69%; NJ - .38%; ME - .43%; MA - .66%; NH - .43%; RI - .54%; VT - .37% and NY - .31%.[1] Yet, despite these differences, Bell Atlantic just assumed one figure for anticipated bad debt for all of its states. Additionally, the plans themselves were verbatim for each of the states. It appears that these decisions were made at the holding company level. Bell Atlantic's proposed NRC plan for New Jersey is included as an example of Bell Atlantic's NRC plans (attached as Exhibit 4, page 1 of the Optional Recurring Payment Plan for Resold Services and Unbundled Network Elements at number 4).

- In the Permanent Cost Proceeding for UNEs in Tennessee (Tennessee Regulatory Authority, Docket No. 97-01262, October 17, 1997), Gerry Crocket's rebuttal testimony on behalf of MCI WorldCom (attached as Exhibit 5) points out instances where BellSouth's collocation proposal is unreasonable in comparison to what other ILECs are doing. This includes: (1) BellSouth's unnecessary use of security mesh above the 8'6" level, when companies such as Bell Atlantic do not require security mesh above that same level (Exhibit 5 at p.6), and (2) although BellSouth has stated that the decision to use drywall enclosures was made in the interest of safety and telecommunications equipment performance, a number of ILECs throughout the rest of the country, such as Bell Atlantic, are allowing, and have already built, collocation enclosures using wire mesh, without

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[1] The figures used were obtained from the Commission's ARMIS Data Retrieval System, found at http://www.fcc/gov/ccb/armis/db/. Data for 1998 only recently became available (April 1999).

apparent safety or transmission problems. (Exhibit 5 at p. 7)

- In July of 1998, Ameritech rejected MCI WorldCom's request to negotiate an amendment to Interconnection Agreements that would allow for the provisioning of unbundled loops and Special Access traffic over MCI WorldCom's existing fiber meets (in addition to local/Intralata/Interlata switched traffic). Despite Ameritech's hesitancy, one other ILEC in the Ameritech region had already agreed to a Fiber Meet interconnection arrangement with MCI WorldCom. As MCI WorldCom explained in its letter to Ted Edwards, Ameritech Information Industry Services, (attached as Exhibit 6) the comparison to the other company demonstrates that such a Fiber Meet interconnection arrangement is consistent with the Interconnection Agreements, technically feasible, cost effective, and an efficient method for routing unbundled loops and Special and Switched Access Circuits between facilities.

- For activation of MCI WorldCom's NXXs in local facilities, ensuring that MCI WorldCom's NXXs are opened and dated correctly in every ILEC central office has been a difficult process. With the advent of NYNEX (now Bell Atlantic-north) using a special testing vehicle called "VETS" testing, MCI WorldCom was able to use NYNEX's solution as a suggestion as to how other companies, such as Pacific Bell, could move toward better internal NXX activation and testing. MCI WorldCom made such a suggestion in the attached letter to Elsa Svensson, Market Manager, Interconnection, Pacific Bell (attached as Exhibit 7).

If you have any questions regarding these examples or need further information please do not hesitate to contact me.

Sincerely,

Lisa R. Youngers

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cc: Bill Rogerson
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ITS

EXHIBIT 1

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of New York Telephone Company	)	
for Approval of Its Statement of Generally	)	
Available Terms and Conditions Pursuant to	)	
Section 252 of the Telecommunications Act of	)	**Case 97-C-0271**
1196 and Draft Filing of Petition for InterLATA	)	
Entry Pursuant to Section 271 of the	)	
Telecommunications Act of 1996	)	

JOINT REPLY AFFIDAVIT OF ANNETTE GUARIGLIA, ROBERT LANIER, SHERRY LICHTENBERG, AND CLIFFORD DINWIDDIE
on Behalf of MCI WorldCom, Inc.

Annette Guariglia, Robert Lanier, Sherry Lichtenberg, and Clifford Dinwiddie, being separately sworn upon oath, do hereby depose and state as follows:

1. My name is Annette Guariglia. I am a Senior Analyst, Northern Region Local Competition Group, for MCI WorldCom. My current job responsibilities are set forth in the Joint Affidavit of Annette Guariglia, Robert Lanier, Sherry Lichtenberg, Rodney Sampson and Clifford Dinwiddie filed in the above-captioned proceeding dated September 28, 1998, which will hereafter be referred to as the "MCI WorldCom Initial Aff."

2. My name is Robert Lanier. My title is Director, East Network Interconnect Management, for MCI WorldCom. My employment duties are set forth in the MCI WorldCom Initial Affidavit.

3. My name is Sherry Lichtenberg. I am Senior Manager, Product Development, for MCI WorldCom. My job responsibilities are set forth in the MCI WorldCom Initial Affidavit.

4. My name is Clifford Dinwiddie. I serve as Manager, Measurements Policy and Advocacy Support, within MCI WorldCom's National Carrier Policy and Planning group. My employment responsibilities are set forth in the MCI WorldCom Initial Affidavit.

INTRODUCTION

5. New York Telephone Company, d/b/a Bell Atlantic-New York ("BA-NY"), submitted a Joint Reply Affidavit of Donald E. Albert, Julie A. Canny, George S. Dowell, Karen Maguire, Patrick J. Stevens, and Craig Soloff and associated exhibits in this proceeding on October 13, 1998, which will be cited hereafter as the "BA-NY Reply Aff." We will refer to BA-NY's initial Joint Affidavit in this proceeding, dated September 11, 1998, as the "BA-NY Initial Aff." BA-NY's Reply Affidavit contains numerous new factual assertions and reaches many conclusions that were not set forth in BA-NY's Initial Affidavit, and BA-NY's Reply Affidavit contains material that could and should have been included in its Initial Affidavit. The purpose of MCI WorldCom's Joint Reply Affidavit is to respond to those new assertions and conclusions. This Joint Reply Affidavit is based on facts known to us and provided by others at our request and under our direction.

6. MCI WorldCom's Reply Affidavit, coupled with earlier testimony in this proceeding, will further demonstrate that BA-NY has not fully complied with the fourteen point "competitive checklist" set forth in § 271 of the Telecommunications Act of 1996 ("the Act"). This Reply Affidavit will also further demonstrate that the system of performance measurements, standards and remedies currently in place in New York is inadequate to support sustained local competition. Because BA-NY does not discuss the performance of its operations support systems ("OSS") in its Reply Affidavit, MCI WorldCom will not address any OSS issues here. MCI expressly reserves the right to address OSS matters in future testimony and briefing.

BA-NY'S ASSERTIONS THAT IT HAS COMPLIED WITH THE COMPETITIVE CHECKLIST CONTAINED IN SECTION 271 OF THE ACT

Interconnection

7. Interconnection Trunk Intervals. BA-NY provides new August and September 1998 performance data for provisioning interconnection trunks to support its claim that it continues "successfully striving to meet" an 18-day standard interval for provisioning interconnection trunks. BA-NY Reply Aff. ¶¶ 12-13. The new figures, just as the intervals BA-NY reported in its Initial Affidavit, only confirm BA-NY's inability to meet the standard 18-day target interval for interconnection trunk orders. BA-NY reports average intervals of 26 days for April, 45 days for May, 35 days for June, 17.5 days for July, 23 days for August, and 22 days for September. See BA-NY's Initial Aff. Ex. Part B, Metric 54; BA-NY Reply Aff. ¶ 13. While BA-NY's 21-day average for July, August, and September represents some improvement over its dismal average of more than 34 days for the first half of the year, it remains in excess of the 18-day standard interval.

8. What is even more significant, however, is that BA-NY reveals in its Reply Affidavit for the first time that only a "small proportion" of trunk orders are even considered "standard" trunk orders subject to the 18-day interval. Id. ¶ 17. Under the New York interim Carrier-to-Carrier Guidelines, the 18-day interval applies to trunk orders of fewer than 192 lines. For orders of more than 192 lines, as well as for orders of particular complexity that are designated "project" orders, intervals must be negotiated by the parties. To these exceptions, BA-NY adds the many orders -- regardless of size or complexity -- where BA-NY does not have underlying DS-3 facilities in place to support additional interconnection trunks. BA-NY does not disclose the percentage of trunk orders that are subject to the 18-day interval as compared to

those orders requiring a "negotiated" interval. Moreover, BA-NY fails to provide any data to show that it is meeting commercially reasonable intervals for these non-standard orders. As a result, the 18-day performance reporting statistics presented by BA-NY in both its initial and reply affidavits say next to nothing about BA-NY's ability to provision interconnection trunk orders in an efficient and timely manner.

9. BA-NY's reporting is insufficient in numerous important ways. BA-NY should be required to provide complete performance reports for all interconnection trunk orders, including orders governed by the standard 18-day interval as well as orders with negotiated due dates. And, with respect to "negotiated" due dates, BA-NY should report the average interval offered and achieved for such orders. The disparity in bargaining power between BA-NY and CLECs frequently means that due dates with "negotiated" intervals are not truly negotiated. Rather, BA-NY often presents due dates on a "take-it-or-leave-it" basis. Therefore, the only real check on BA-NY's non-standard intervals is close scrutiny by this Commission.

10. Another problem with BA-NY's purported 18-day trunk interval is that BA-NY does not start the 18-day clock running until after it has provisioned the underlying DS-3 facilities that will house the interconnection trunk groups being ordered. This "stacking" of provisioning intervals causes unnecessary delays. BA-NY provides no data at all regarding DS-3 trunk provisioning -- a critical gap in its performance reporting for all the reasons stated above. Moreover, all DS-3 orders are subject to negotiated intervals, as are any T-1 orders when an underlying DS-3 is not available. As a practical matter, BA-NY should coordinate DS-3 and T-1 trunk provisioning such that the T-1 trunks are turned up within two or three days after the DS-3 is provisioned. As it stands now, BA-NY provisions the DS-3 and then waits a minimum of 18 days to provision the T-1 trunks. The fact that BA-NY often falls behind in provisioning DS-3s

only exacerbates the problem. See MCI WorldCom Record of Delayed Trunk Orders Caused by Lack of DS-3 Facilities (Exhibit 1).

11. BA-NY also wrongly asserts in its Reply Affidavit that MCI WorldCom voluntarily designated 35 of its 43 interconnection trunk orders in May, June, and July 1998 as "project" orders, thereby excluding them from the 18-day interval. BA-NY Reply Aff. ¶ 21. Nor is BA-NY correct in asserting that MCI WorldCom requested substantially longer than 18-day intervals for the remaining 8 orders during that period. Id. MCI WorldCom's records confirm that none of its trunk orders were marked as "project" orders. See MCI WorldCom Record of Trunk Orders (Exhibit 2). In some instances, MCI WorldCom did propose lead times exceeding 18 days. Of the 43 orders in question, the average requested interval by MCI WorldCom was 20 days, and the average completion interval by BA-NY was 44 days. Only one order was delivered on time.

12. BA-NY also seeks to downplay its record on trunk provisioning with the claim that BA-NY's poor provisioning performance has not affected CLEC competitiveness in New York State. This is simply not the case. BA-NY suggests that MCI WorldCom has no need for additional trunking capacity because MCI WorldCom is not using all of its available trunking capacity today. BA-NY Reply Aff. ¶ 24. Unfortunately, BA-NY's basis for this assertion is too vague to permit a direct response. BA-NY states that "[i]n June, MCI's network operated at 54% and it is operating at 55% at the end of September." Id. BA-NY does not specify whether these percentages purport to apply to tandem traffic, direct end office trunk ("DEOT") traffic, or both, or whether those figures include outbound traffic, inbound traffic, or both. Nor does BA-NY account for the fact that some MCI WorldCom trunks may be at or near capacity while others may have been activated only recently and are therefore relatively underutilized. If BA-NY is

referring only to MCI WorldCom's tandem trunks, then the low usage figures may be attributable to MCI WorldCom's deployment of the DEOTs discussed above. These DEOTs were put in place precisely to relieve capacity pressure on the tandem trunk groups. In any event, MCI WorldCom does not invest in additional trunking capacity unless there are actual or anticipated traffic increases that threaten to overburden a particular trunking corridor. Moreover, even if (in BA-NY's opinion) MCI WorldCom was "underutilizing" its trunking capacity, such an observation would not relieve BA-NY of its obligation to provide interconnection trunks in a timely manner. It is MCI WorldCom, not BA-NY, that is entitled to determine the level of trunk capacity it will utilize. It is essential for MCI WorldCom to maintain adequate reserve capacity in its tandem trunks. This is especially important in local markets because, as a new entrant, MCI WorldCom anticipates rapid increases in its customer base and does not want to risk call blockage for new customers.

13. BA-NY also inaccurately suggests for the first time in its Reply Affidavit that CLECs have not been harmed by BA-NY's poor trunk provisioning efforts because CLECs have sometimes told BA-NY that they were not ready to accept immediate provisioning of trunk orders. BA-NY Reply Aff. ¶ 18. This fact does not show a lack of CLEC need for trunks. Unfortunately, it illustrates the inadequacy of BA-NY's provisioning procedures. In MCI WorldCom's experience, BA-NY frequently fails to provide MCI WorldCom with required firm order confirmations ("FOCs"), and later "cold calls" MCI WorldCom to announce that a new trunk group is ready to be provisioned. Without timely status notices, however, MCI WorldCom operations personnel sometimes are not prepared to take receipt of an order. MCI WorldCom has communicated its concerns about this policy to BA-NY. See E-mail from Robert Lanier (July 22, 1998)(Exhibit 3).

14. In addition, BA-NY is wrong when it now suggests that trunk blocking is no longer a barrier to development of meaningful local competition. BA-NY Reply Aff. ¶¶ 23, 26. To the extent there has been any improvement in common transport blockage in 1998, it has not been the result of steps initiated by BA-NY. In response to the interstate access reform tariff rate changes implemented in January 1998, the long-distance industry migrated substantial amounts of traffic from tandem paths to DEOT paths, thus greatly reducing the risk of tandem blockage. MCI WorldCom is concerned that trunk blockage will resurface as a significant problem for local competitors when CLEC traffic increases. When this occurs, BA-NY will be in no better position to resolve the problem now than it was a year ago.

15. MCI WorldCom must also take issue with BA-NY's newly asserted claims regarding FOCs for interconnection trunks. See BA-NY Reply Aff. ¶ 25. Contrary to BA-NY's suggestion, MCI WorldCom was in no way "confused" when it cited a 6-day interval for trunk FOCs in its Initial Affidavit. See MCI WorldCom Initial Aff. ¶ 11. Although BA-NY correctly notes that the New York interim Carrier-to-Carrier Guidelines do not require a 6-day interval, BA-NY well knows that the working assumption among all carriers for the past several months has been that BA-NY would bring the interval down to 6 days. Moreover, and contrary to BA-NY's assertions, BA-NY has consistently missed even the 10-day interval in fulfilling MCI WorldCom's orders. BA-NY met a 10-day FOC interval for only two orders from May through September, and its average interval was 31 days. See MCI WorldCom Record of Trunk Orders (Exhibit 2).

16. Finally, BA-NY wrongly accuses MCI WorldCom of attempting to "sandbag" BA-NY on the issue of measured two-way trunking. BA-NY Reply Aff. ¶ 31. MCI WorldCom's position has been clear and consistent from the outset: BA-NY must provide MCI

WorldCom with two-way trunking under the parties' interconnection agreement, and must provide the two-trunks without any condition that BA-NY maintain exclusive control over those facilities. It is disingenuous of BA-NY to claim in its Reply Affidavit that its tariffed offering, under which it would retain control of two-way trunk groups, is a reasonable alterative for MCI WorldCom when this tariffed offering conflicts with MCI's interconnection agreement with BA-NY. It is equally disingenuous for BA-NY to represent in its Reply Affidavit that it is the first ILEC in the nation to offer two-way trunking to CLECs. US WEST has been offering measured two-way trunks for some time, and MCI WorldCom suggested months ago that BA-NY consult with US WEST on this issue.

17. As a more general matter, MCI WorldCom is disappointed in the overall tone of BA-NY's Reply Affidavit. On numerous occasions, BA-NY accuses MCI WorldCom and other CLECs of using their experiences with BA-NY merely as vehicles to generate regulatory "fodder." In MCI WorldCom's case, nothing could be further from the truth. The facts recited in MCI WorldCom's Initial and Reply Affidavits all derive from MCI WorldCom's serious and costly efforts to penetrate BA-NY's monopoly market for local exchange services in New York State. Any "fodder" generated by these efforts is due to BA-NY's performance problems, not to MCI WorldCom's desire to sabotage its own business efforts in New York. It is unfortunate that BA-NY considers MCI WorldCom's legitimate business concerns as mere regulatory "fodder."

18. Moreover, the tone of many portions of BA-NY's Reply Affidavit calls into question its commitment to treat MCI WorldCom at parity with BA-NY's large retail customers. In its Prefiling Statement, BA-NY commits to serving to CLEC accounts at parity with the way BA-NY handles its large retail accounts. See BA-NY Pre-Filing Statement at 3. In MCI WorldCom's experience, BA-NY has failed to abide by this commitment. It is true that BA-NY

has taken steps such as supplementing its CLEC handbook, giving account managers laptops, pagers and cell phones, and designating alternative account managers. Such relatively cosmetic changes mean little, however, if BA-NY lacks an overall corporate commitment to treat CLECs at parity with BA-NY's own large retail accounts. BA-NY's disparate treatment of different parts of MCI WorldCom -- MCI WorldCom as a CLEC versus MCI WorldCom as an access customer -- illustrates the disparity. MCI WorldCom, as a large consumer of BA-NY access services, enjoys a dedicated Account Director for access services with a large staff. In contrast, BA-NY's MCI WorldCom Account Director for local services has a significantly smaller staff. Even more telling is the difference in BA-NY's compensation system for its local service account team as compared to its access services account team. The BA-NY Account Director for access services receives a commission based on the amount of access services purchased by MCI WorldCom. BA-NY's Account Director for local services, however, is paid on a salaried basis, and therefore earns the same regardless of whether MCI WorldCom buys ten dollars or ten million dollars of unbundled network elements or local services for resale. The corporate message is clear: BA-NY account teams for local have no special incentives to provide quality service to MCI WorldCom and other CLECs.

19. Collocation. BA-NY's Reply Affidavit makes it all too clear that BA-NY's claimed 76-day interval for physical collocation is often illusory. BA-NY now concedes that the interval can be delayed up to three additional months if the requesting CLEC has not met forecasting requirements that were adopted unilaterally by BA-NY in its Prefiling Statement. See BA-NY Reply Aff. ¶ 47. MCI's interconnection agreement with BA-NY does not include any forecasting requirement, nor does it excuse BA-NY from providing timely collocations when forecasts have not been received at least three months in advance. Moreover, BA-NY asserts that

it will not comply with the 76-day interval when space conditioning is required or when "spikes in demand" exceed BA-NY's forecasted ability to complete collocations. See BA-NY Reply Aff. ¶ 48. To make matters worse, there is no financial penalty when BA-NY fails to meet its interval, even in those cases where it agrees that the 76-day interval is applicable. In short, BA-NY has made its own rules as to when it will be constrained by the 76-day interval, and those rules leave BA-NY with ample opportunity to manipulate the timing of CLECs' collocation.

20. In response to ALTS' reasonable suggestion that BA-NY should survey its central offices, BA-NY states only that its Prefiling Statement does not impose that requirement. See BA-NY Reply Aff. ¶ 72. As a general matter, BA-NY's repeated attempts in its Reply Affidavit to treat as legally binding those provisions of its Prefiling Statement upon which it selectively wishes to rely, while at the same time ignoring other provisions of the Prefiling Statement, are extremely troubling. Specifically, if CLECs are to obtain collocation in a reasonable and nondiscriminatory manner, then they need to have some idea of which of BA-NY's central offices will support collocation. CLECs should not have to use the collocation application process, which is expensive and time-consuming, in order to obtain basic information they need to plan a collocation strategy.

Access to Unbundled Network Elements

21. **MCI WorldCom Loop Trial.** In its Reply Affidavit, BA-NY criticizes MCI WorldCom for failing to notify BA-NY that MCI WorldCom was conducting a "trial" of basic business processes for residential loop provisioning. BA-NY Reply Aff. ¶ 94. BA-NY's suggestion that its poor performance should be excused because MCI WorldCom improperly conducted a "unilateral" trial is surprising, to say the least. Id. ¶ 95. MCI WorldCom's provisioning of local residential service using BA-NY unbundled loops was intended to be a trial

of MCI WorldCom's internal ordering, provisioning and billing procedures. Because BA-NY's unbundled loop offering is a tariffed product that should be available on reasonable terms and conditions and for commercially significant volumes of loops, MCI WorldCom reasonably expected that BA-NY was ready to provide unbundled residential loops without developing additional "special" procedures. MCI WorldCom's residential unbundled loop orders were intentionally made as straightforward as possible. Under no circumstances would MCI WorldCom have enlisted residential customers for this trial had it assumed that BA-NY was unable to provide unbundled loops to residential customers in a timely and correct manner. It is disappointing that BA-NY regards as inappropriate MCI WorldCom's attempts to obtain a supposedly standardized network element.

22. BA-NY also asserts that MCI WorldCom "sandbagged" BA-NY by not informing BA-NY of loop provisioning problems experienced by MCI WorldCom in connection with the MCI WorldCom loop offering. BA-NY Reply Aff. ¶ 94. On the contrary, in all instances when MCI WorldCom experienced problems -- from ordering to provisioning -- MCI WorldCom promptly raised the issue with its BA-NY account team. These issues included missed FOCs, inappropriate contact of MCI WorldCom customers by BA-NY employees, and delayed or improper provisioning of loops, all of which were set forth in MCI's Initial Affidavit in this proceeding. See MCI WorldCom Initial Aff. ¶ ¶ 49-60. BA-NY's account team responded on numerous occasions in writing via electronic mail to the various issues raised by MCI WorldCom. See Exhibit 4. BA-NY cannot credibly claim that it was unaware of these problems, or that it was unaware of the fact that MCI WorldCom was placing residential loop orders.

23. BA-NY points to overall performance data to support its claim that it provisioned 80% of loop orders on time. BA-NY Reply Aff. ¶ 95. This figure is contradicted by

MCI WorldCom's experience. In fact, as set forth in MCI WorldCom's Initial Affidavit, BA-NY provisioned only 19% of MCI WorldCom's residential loop orders on time. MCI WorldCom Initial Aff. ¶ 52. In the trial of new second line service to residential customers, all customers required a dispatch from BA-NY to deliver the new customer line to the NID, and BA-NY was also required to take action to deliver the circuit to MCI's collocation presence. Because BA-NY provided no notices of completion for these orders, MCI WorldCom was forced to test, on a daily basis, whether there was actual dial tone to the customer's NID (for houses) and to the first point of connection inside the customer's premises (for apartments). The significant amount of additional work caused by BA-NY's failure to provide notices of completion calls into serious doubt BA-NY's ability to provide unbundled loops on a large scale to residential and small business customers. In fact, two MCI WorldCom customers are still without dial tone at this late date because BA-NY delivered their unbundled loops to the wrong slot on its frames. BA-NY has admitted this error to MCI WorldCom, but the fact remains that these customers have been without dial tone for over one month.

24. BA-NY criticizes MCI WorldCom for inadequately explaining the frequency of customer rescheduling and how such rescheduling was treated in the provisioning figures reported by MCI WorldCom. BA-NY Reply Aff. ¶ 97. BA-NY initiated rescheduling in two ways: either directly with MCI WorldCom customers in person or by telephone, or by asking MCI WorldCom to place a supplemental order requesting a new due date. If MCI WorldCom did place a supplemental order, using a new local service request ("LSR") to schedule a new date, then MCI WorldCom treated this as a new order in its provisioning figures. When BA-NY missed verbal commitments between an MCI WorldCom customers and a BA-NY

representatives, such numbers were not included in the figures reported in MCI WorldCom's Initial Affidavit, despite the fact that many such commitments were broken.

25. BA-NY's claim that MCI WorldCom did not adequately identify instances of inappropriate BA-NY contact with MCI WorldCom customers is flatly incorrect. BA-NY Reply Aff. ¶ 97. MCI WorldCom raised this issue formally with BA-NY on several occasions during the trial, noting specific incidents and customers. BA-NY responded by stating that MCI WorldCom's complaints "appear to be isolated incidents." See Exhibit 4. Finally, BA-NY asserts that it cannot refute MCI WorldCom's claims regarding BA-NY's chronically late FOCs. See BA-NY Initial Aff. Ex. B, lines 9, 10, 12, 12s, and 14; BA-NY Reply Aff. Ex. G. ¶ 98. MCI WorldCom repeatedly raised BA-NY's failure to meet the four-hour FOC requirement with BA-NY employees and executives. BA-NY clearly knew about its problems providing timely FOCs to MCI WorldCom and should not be allowed to claim otherwise here.

26. GR303. BA-NY contends that it "cannot provide MCI with UNE access through GR-303-compliant equipment because BA-NY does not use GR-303 equipment in its network today." BA-NY further states that "[t]he handful of GR-303 installations in the Bell Atlantic region are technical and operational trials or first office applications, none of which are in New York." BA-NY Reply Aff. ¶ 83. In hiding behind the term "GR303 equipment," BA-NY is not describing the issue correctly. GR303 itself is not equipment, it is a functionality of Digital Loop Carrier ("DLC") equipment, such as Litespan 2000, that reflects an industry-standard definition of the interface between a Class 5 local switch and a remote terminal. BA-NY does use such DLC equipment in its network, and such equipment can be outfitted with GR303-compliant functionality without regard to whether BA-NY itself uses the capability. The fact that BA-NY's own Class 5 switches may not support GR303 is irrelevant, because the remote terminal will be

connected to the CLEC's switch, not BA-NY's. Using the GR303 functionality, the DLC can be dedicated to a CLEC such as MCI WorldCom or "multi-hosted" between BA-NY and other CLECs, thereby providing an alternative means of unbundled access to BA-NY's loop plant. See MCI WorldCom Initial Aff. ¶ 23.

27. The fact that GR303 capability is not currently being deployed in New York is no excuse for BA-NY's failure to make the capability available to CLECs. BA-NY readily admits it is using the capability elsewhere in its service territory -- why is New York excluded? In fact, Bell Atlantic has been a leader in discussing the use of GR303 functionality as a means of accessing unbundled elements. For example, Bell Atlantic representatives recently gave a presentation at a Bellcore symposium on the topic. See Exhibit 5.

28. BA-NY's new technical assertions are unsupported. BA-NY first asserts that a GR303-capable "central office terminal" is physically different equipment from a GR303 "remote terminal." BA-NY Reply Aff. ¶ 84. BA-NY claims that "the equipment hardware is different, the operational aspects of inventory, assignment, performance monitoring, and testing are different, and the equipment is maintained by different BA-NY technicians." BA-NY Reply Aff. ¶ 84. But BA-NY nowhere states precisely what "equipment hardware" is different. Vendors with whom MCI WorldCom has worked have indicated that the central office and remote terminals require the same hardware. BA-NY must be required to specify any supposed hardware differences. Moreover, any operational, testing or maintenance differences between central office and remote terminals are a result of BA-NY's network design, and are not based on any differences in the equipment itself. BA-NY's operational idiosyncracies cannot be the basis for any claim of technical infeasibility.

29. Second, BA-NY contends that "MCI's representation that BA-NY can simply convert an existing Litespan central office terminal into a Litespan remote terminal is grossly misleading." BA-NY Reply Aff. ¶ 84. BA-NY alleges that this conversion "would involve changing software, adding hardware, and re-doing central office wiring and cabling, it would be inefficient and wasteful, and it would create additional service outage risks." Id. MCI WorldCom takes strong issue with BA-NY's unsupported blanket assertions. BA-NY is not accurately describing the work required to allow GR303-compliant equipment to be used to obtain access to unbundled loops. BA-NY and other ILECs routinely perform software and hardware changes to their networks in order to introduce new features and services. BA-NY cannot credibly raise the specter of "additional service outages" in this context when its preferred method of loop access – collocation – poses far more serious risks of service disruption than loop concentration using GR303-compliant functionality.

30. BA-NY further claims that it is not technically feasible "at this time" to "multi-host" a GR303 system from both a BA-NY switch and a CLEC switch (or for that matter from multiple CLEC switches). BA-NY Reply Aff. ¶ 85. But GR303 functionality clearly permits multi-hosting, and GR303 capability is available now to be installed in DLC equipment used by BA-NY. Although implementation and operational issues do exist regarding this issue, it is simply not the case that the capability sought by MCI WorldCom is technically infeasible. Bell Atlantic's Bellcore presentation on GR303 functionality confirms this to be the case. See Exhibit 5.

31. Finally, BA-NY states that it has not "rejected MCI's GR-303 requests out-of-hand," and chides MCI WorldCom for allegedly failing to accept BA-NY's proposal to conduct operational and technical trials of GR303 capability. BA-NY Reply Aff. ¶ 86. This is

simply not true. BA-NY has refused to agree to MCI's request for GR303-compliant concentration capability claiming, among other things, that there were unresolved technical issues and that it was not deploying this capability in its network until at least 1999. Moreover, BA-NY offered to test GR303 capability only with MCI WorldCom's collocated facilities, when the point of MCI WorldCom's GR303 request is to avoid unnecessary collocations. See Exhibit 6.

32. **Loops Served by Integrated Digital Loop Carrier Facilities.** BA-NY claims that it is doing the best that it can -- and all that it is required to do -- when it proposes to allow MCI WorldCom to serve customers currently served through Integrated Digital Loop Carrier ("IDLC") facilities by providing MCI WorldCom customers with service using abandoned copper feeder when MCI WorldCom orders an unbundled loop. BA-NY Reply Aff. ¶ 100. BA-NY even suggests that the abandoned copper sometimes might actually provide a better signal than the fiber optic cable BA-NY used to replace the copper. Id. ¶ 101. These are poor answers to MCI WorldCom's legitimate need for access to loops served with IDLC facilities. As the FCC recently found, "[a] BOC must provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested. In order to provide the functionality requested, such as the ability to deliver ISDN or xDSL, the BOC may have to take affirmative steps to condition existing loop facilities to enable requesting carriers to provide services not currently provided over such facilities." [1] Specifically addressing IDLC, the FCC found that the BOC "must provide competitors with access to unbundled loops regardless of whether the BOC uses" IDLC

[1] In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271, ¶ 187 (rel. Oct. 13, 1998)(emphasis added).

technology. Id. The FCC is exploring the manner in which ILECs will be required to unbundle IDLC loops, and presumably will be ordering appropriate technical solutions.

33. As a threshold matter, BA-NY can point to nothing to support its contention that it can actually provide the copper feeder solution in a commercially reasonable manner. Other competitors, such as Nextlink, that have attempted to use the "spare copper" solution have found that fully 50% of the time the substitute copper they received was inadequate to provide xDSL service.[2] MCI WorldCom has no reason to believe that BA-NY can do better. BA-NY also proposes to offer abandoned copper as an alternative only "if feasible." BA-NY Reply Aff. ¶ 100. BA-NY does not say anything about what happens if its preferred alternative is not feasible.

34. In any event, BA-NY's claim that MCI WorldCom actually is getting better and more efficient networking by receiving "old" copper instead of "new" fiber is false. Loops provided through IDLC facilities can and should be unbundled in a manner that does not degrade the quality of the loops. To force MCI WorldCom and other CLECs to use inferior and abandoned technology is discriminatory. BA-NY is in the process of abandoning its copper loop plant for good reasons: often loops are too long or of poor quality, and these features diminish the quality of the transmission. BA-NY has no answer to these facts.

35. BA-NY's suggestion that Universal Digital Loop Carrier ("UDLC") technology is an acceptable alternative to IDLC is incorrect. BA-NY Reply Aff. ¶ 101. BA-NY points to outdated UDLC technology in an effort to avoid providing CLECs with state-of-the-art, forward-looking IDLC technology. As MCI WorldCom indicated in its Initial Affidavit (and as

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[2]See Comments of Nextlink Communications, Inc., at 20, in Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (FCC Sept. 25, 1998).

BA-NY does not deny), moving a customer from an IDLC system to a UDLC system will inevitably result in degraded signal quality that the customer will notice, because it involves an extra set of digital-to-analog conversions. Modems will slow, hiss will increase, and customers will quickly return to BA-NY for better service. In addition, moving a customer from IDLC facilities to either UDLC or copper facilities requires additional cross-connects that introduce unnecessary points of potential failure and would not allow a future upgrade to ADSL technology because UDLC cannot support higher-bandwidth services.

36. The essence of MCI WorldCom's contention is clear: when MCI WorldCom leases unbundled loops from BA-NY, MCI WorldCom must be provided with loops of equivalent type and quality to what BA-NY provides itself, and must be given a means of accessing such loops that is non-discriminatory compared to the manner in which BA-NY accesses its own loop plant. As BA-NY continues to improve its network by installing IDLC (and other technologies), it has an obligation to install versions of IDLC that will allow multiple CLECs to interconnect either at the remote terminal or at the central office using the same electronic OSS solutions that BA-NY itself uses to connect its loop plant to its switches. Without such access, MCI WorldCom's ability to use unbundled loops to serve residential and small business customers will be improperly constrained.

37. **xDSL-Equipped Unbundled Loops**. BA-NY claims that it has fully complied with its obligation to provide competitors with "Digital Subscriber Line," or "xDSL-capable" and "xDSL-equipped" unbundled loops, on the novel ground that "at this time, BA-NY has no DSL loops or electronics to provide to MCI." BA-NY Reply Aff. ¶ 104. This is no answer at all. Under its interconnection agreement with MCI and as a matter of federal law, BA-NY is obligated to provide MCI WorldCom loops that are capable of transmitting DSL signals --

so-called "xDSL-capable" loops. In addition, BA-NY has a continuing obligation to provide all of the features, functions and capabilities of an xDSL loop at the request of MCI WorldCom or any other CLEC. BA-NY has no processes in place to meet those obligations -- indeed, BA-NY appears to take the position that it is under no obligation to do so until it chooses itself to offer retail service using DSL-capable loops. See BA-NY Reply Aff. ¶ 103. Nor, as BA-NY acknowledges, is BA-NY currently able to bill, provision, or provide adequate pre-ordering information for xDSL loops. See id. ¶ 103. BA-NY recently informed MCI WorldCom that some of these processes are "being developed," but such procedures are not even close to being available today. See Email from J. Dail (Oct. 7, 1998)(Exhibit 7).

38. Although BA-NY promises to provide access to xDSL loops and functionality sometime in the indefinite future, its assertions are so vague as to be essentially meaningless. See id. In particular, BA-NY's October 7, 1998 letter discusses ordering and provisioning of xDSL loops in only the most general way, and is essentially silent about pricing terms. BA-NY merely indicates that recurring, non-recurring and service order charges will be assessed, but does not state what those charges are or the manner in which they will be determined. Id. To the limited extent that BA-NY does provide specifics, the charges it proposes are grossly anticompetitive. For example, BA-NY states that one-time non-recurring "conditioning charges" to restore the loop's features and functions will be set on a case-by-case basis "based upon the type of conditioning that is required." Id. This virtually assures that only BA-NY, the owner of the loop and the ultimate beneficiary of any conditioning, will be able to afford to offer customers xDSL service. Such "conditioning" charges have no place in truly forward-looking xDSL loop rates.

39. BA-NY is also silent about its obligation to unbundle the "Digital Subscriber Line Access Multiplexer," or "DSLAM," as well as other electronics associated with providing xDSL service. In its Reply Affidavit, BA-NY simply dismisses all questions relating to xDSL technology, stating only that "at the present, unbundling ADSL DSLAMs is not technically feasible," and that these matters "are being investigated in the FCC's Section 706 NPRM." BA-NY Reply Aff. ¶ 104. In fact, this matter is far more than merely "being investigated" by the FCC. The FCC has stated that "equipment used to provide advanced services are network elements subject to the [unbundling] obligations in section 251(c)." [3] BA-NY's suggestion to this Commission that it need not or cannot act because the FCC is "investigat[ing]" the matter should be rejected.

40. To be sure, all parties must recognize that xDSL technology is new and developing rapidly. Indeed, the Commission should not issue rules now based on technological limitations that are currently being addressed by vendors. For example, although DSLAMs cannot today support multiple carriers, such a limitation will likely be resolved and, in any event, can be addressed through alternative means. For example, although multiple carriers cannot each pick up traffic at the DSLAM itself, they can pick up traffic at so-called "edge" Asynchronous Transfer Mode ("ATM") switches connected to the DSLAM or at BA-NY's own ATM switches.

41. BA-NY, however, refuses even to discuss unbundling xDSL electronics with MCI WorldCom or other CLECs. BA-NY should be required to work with its vendors and CLECs to develop network elements that will operate in a multi-carrier environment, and it should be required to commit to deploy such elements as they are developed. In the meantime,

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[3] In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, FCC 98-188, ¶ 57 (rel. Aug. 7, 1998) ("706 Order").

BA-NY should be required to share xDSL electronics in any technically feasible manner, including using ATM "edge" switches in central offices and/or the creation of processes to enable competitors to collect traffic at BA-NY offices where ATM switches currently are located.

42. Finally, BA-NY refuses to discuss how it will offer competitors the opportunity to provide xDSL service to customers served through DLC remote terminals, because it is not providing such service to its customers. BA-NY Reply Aff. ¶ 105. Once again, BA-NY is seeking to deprive CLECs of a competitive opportunity and New York consumers of the benefits of competition. The FCC has held that ILECs must provide access to loops provisioned through remote concentration devices such as DLCs.[4] BA-NY should be required to provide technically feasible methods of providing loops to allow competitors to provide high-speed data service, regardless of whether BA-NY itself wishes to serve those customers. BA-NY has not disclosed its plans for xDSL deployment in IDLC loops. A monopoly carrier would place DSLAM equipment at the remote terminal in order to provide xDSL service via an IDLC line. In a competitive environment, however, such a result is untenable unless and until the DSLAM can be multi-hosted to multiple carriers, or unless and until BA-NY demonstrates that it can provide some other non-discriminatory method for competitors to offer xDSL service at parity with BA-NY. Absent such multi-hosting capability, whoever first places DSLAM equipment in the remote terminal will effectively exclude other competitors from getting access to the copper distribution (since it is currently technically infeasible to place multiple DSLAMs at remote terminals). Therefore, until BA-NY makes competitive choices available, it should not be allowed to place DSLAMs in remote terminals. To do otherwise is to ensure that competitors will be subject to discriminatory treatment.

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[4] 706 Order at ¶ 57.

43. More generally, the foregoing discussion demonstrates that BA-NY does not currently offer CLECs nondiscriminatory means of access to unbundled local loops. The primary means of access offered by BA-NY is through some form of collocation. But collocation cannot be a nondiscriminatory means of accessing unbundled loops for the very simple reason that BA-NY does not have to incur the time and expense of collocation when BA-NY wishes to provision unbundled loops to itself. Although BA-NY has tariffed its "enhanced extended loop" or "EEL" service, that offering is a poor substitute for providing CLEC's with nondiscriminatory access to BA-NY's loop plant directly at BA-NY's central offices. See MCI WorldCom Initial Aff. ¶¶ 20-21. Two of the alternatives discussed above, GR303 capability and appropriate unbundled access to IDLC loops, could be ways in which CLECs obtain access to unbundled loops other than through collocation. As described in detail above and in MCI's Initial Affidavit, BA-NY has fought MCI WorldCom tooth and nail in MCI WorldCom's attempts to explore and develop these potential solutions. Efficient, nondiscriminatory access to BA-NY's loop plant is absolutely critical to MCI WorldCom's business plans to enter and expand into local residential and small business markets in New York.

Unbundled Transport

44. In its Reply Affidavit, BA-NY continues to contradict itself with respect to its willingness to permit CLECs to provision unbundled transport circuits and access circuits on the same DS-3. On the one hand, BA-NY concedes that it agreed in the Commission's OSS Collaborative (Issue 137) that CLECs may purchase UNE loop elements connected to access multiplexing and transport. See BA-NY Reply Aff. ¶ 110. This would result in "commingling" of UNE and access traffic on the DS-3 side of the arrangement. On the other hand, however, BA-NY insists that MCI WorldCom may not combine "both UNE and access use" on the same DS-3